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1 sure that's not a witness trying to touch base.
2 **(Off the Record from 11:15 a.m until 4:43 p.m.)**

3 **COURT REPORTER:** Mr. Kelley, you are still under
4 oath. Okay?

5 A: Okay.

6 Q: All right, Mr. Kelley, and thanks for your
7 patience. I know it's been a long day, but --

8 A: Yes.

9 Q: -- we'll try to finish up as quickly as we can.
10 I think when we left off with your deposition
11 testimony earlier, you indicated that you had
12 walked out of Ms. Sam's office and shortly
13 thereafter seen the Myrtle Beach driver. Is
14 that correct?

15 A: Right. After I was terminated. Yes.

16 Q: Okay. Tell me where you were physically in the
17 building when you saw the driver. Were you in
18 the building; were you outside the building?

19 A: I was in the building.

20 Q: Okay. And did you have any conversation with
21 the driver?

22 A: I sure did.

23 Q: Okay. And what did you talk about?

24 A: I just basically told him that it was nice
25 working with him and he kind of looked at me,

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1 you know, a surprised look and I told him that
2 I was just terminated.

3 Q: And what's that driver's name?

4 A: I don't remember. I know he is an older
5 gentleman.

6 Q: Older gentleman? What race is he?

7 A: White.

8 Q: And it has been the same driver doing that
9 Myrtle Beach run to Florence?

10 A: Right.

11 Q: Same driver you had worked with in the past?

12 A: The Myrtle Beach driver?

13 Q: Correct.

14 A: Correct. But now he wouldn't always be the one
15 that brings it.

16 Q: But usually the one?

17 A: Right.

18 Q: Had you punched out at that time?

19 A: Yes. I was terminated, so I punched out.

20 Q: Well, I understand that you thought you were
21 terminated and you punched out. I'm trying to
22 figure out whether you punched out before you
23 saw the Myrtle Beach driver or after.

24 A: Before. I was terminated before he got there.

25 Q: Okay. So I thought that you testified that you

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1 saw the Myrtle Beach driver right after you
2 came out of Ms. Sam's office.

3 A: Right. I was terminated when I come out of the
4 office.

5 Q: I understand and I understand why you're saying
6 that you were terminated at that time and I
7 understand that you -- that that's your
8 testimony. What I'm trying to get at is just
9 trying to get the time line, okay? So, you
10 left Ms. Sam's office and you saw the Myrtle
11 Beach driver right then? You said he rounded
12 the corner and there he was?

13 A: Right. He was coming into the building and I
14 was leaving out.

15 Q: Okay. So when you left Ms. Sam's office, you
16 went to punch out and then you saw the Myrtle
17 Beach driver or the other way around?

18 A: I punched out after I was terminated. I can't
19 --

20 Q: I understand. I'm ask --

21 A: The best way I can answer you.

22 Q: Well --

23 A: And after that, after I was terminated, I
24 walked out, you know, when they told me I had
25 to leave the premises, as I was walking out of

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1 the office and turned the corner, the Myrtle
2 Beach driver was coming in.

3 Q: Right. What I'm trying to get at is the
4 physical act of punching out, can you recall
5 whether or not you did that before you saw the
6 Myrtle Beach driver or after you saw the Myrtle
7 Beach driver?

8 A: Oh, before.

9 Q: You punched out before you saw the Myrtle Beach
10 driver?

11 A: Right. Because I was terminated. I had to go
12 home.

13 Q: I understand that it's your testimony you were
14 terminated. You had no choice but to go home.
15 I'm just trying to get at physically, the time
16 line of events that took place. And so I was
17 confused because your earlier testimony made it
18 sound like as soon as you came out of Ms. Sam's
19 office, the Myrtle Beach driver was right
20 there. You turned the corner and there he was.

21 A: There again, after they terminated me, when he
22 confirmed that I was terminated with Tanisha,
23 yes, I was leaving to go home and when I
24 rounded the corner, there was the Myrtle Beach
25 driver.

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1 Q: And you had already punched out by that time?

2 A: That's correct.

3 Q: Okay. That's all I'm trying to figure out,
4 okay? Now, at that point, you walked outside?

5 A: Right.

6 Q: Okay. You didn't speak to Tanisha any further
7 about the shuttle run?

8 A: No.

9 Q: You didn't ask her if you could make the
10 shuttle run now that the Myrtle Beach driver
11 had arrived?

12 A: I made a -- I made a comment when I said
13 there's the Myrtle Beach driver right there,
14 but I can't remember --

15 Q: And you can't --

16 A: But I don't know whether I made the comment or
17 whether she made the comment about, you know,
18 well, I can't take it because I'm terminated.

19 Q: That sounds like a comment you made.

20 **MR. BABB:** Object to the form of the question.

21 Q: Is that a comment that you made?

22 A: You know, I can't remember who made it, but I
23 think it was -- I'm not sure. I'm not sure.

24 Q: Okay. So after the Myrtle Beach driver, after
25 you saw the Myrtle Beach driver, you had some

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- 1 other conversation with Ms. Sam after that. Is
2 that your testimony?
- 3 A: Right. Because after that happened, we were
4 all -- I was going out first and she was coming
5 behind me because she had to get off the clock.
6 It was about time for her to get off.
- 7 Q: So this was when you were outside the building
8 or still inside the building?
- 9 A: I was exiting out of the building.
- 10 Q: Leaving the building?
- 11 A: Right.
- 12 Q: Okay. But you didn't request that you be
13 allowed to punch back in and take the Myrtle
14 Beach packages to Columbia?
- 15 A: No. I was terminated.
- 16 Q: What did you do next?
- 17 A: I proceeded to go to my car and I went home.
- 18 Q: Okay. And what was your next communication
19 with anyone at UPS?
- 20 A: I contacted my shop steward.
- 21 Q: Okay. Did you speak with -- who was your shop
22 steward at the time?
- 23 A: At that time, that was Jermaine Pryor.
- 24 Q: And how did you contact Mr. Pryor?
- 25 A: I think I contacted him when I got home, but I

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1 just sitting.

2 Q: At the time as of January 3, 2009, there has
3 been some testimony and exhibits offered about
4 a statement by Willie Ford about being
5 approached by two individuals at 3:00 a.m. in
6 the morning of sometime in spring 2008, is that
7 correct?

8 A: Yes.

9 Q: At the time that you, as of January 3, 2009,
10 were you aware of that alleged incident?

11 A: Yes, I was.

12 Q: From Mr. Ford himself?

13 A: I've heard, yes, I've heard him talk about it.

14 Q: And when did you hear him talk about it?

15 A: I don't remember.

16 Q: But you are sure that it was prior to your
17 discharge?

18 A: Oh, yes.

19 Q: Do you recall any discussion with either Ms.
20 Sam or Mr. Hanser prior to leaving the center
21 about when the Myrtle Beach driver was going to
22 arrive?

23 A: Repeat that.

24 Q: Do you recall any discussion with Ms. Sam or
25 Mr. Hanser about how long you would have to

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1 local level hearing there was no agreement
2 reached between the union and the company about
3 your discharge, is that correct?

4 A: That's correct.

5 Q: And so the union elected to pursue it to panel?

6 A: Right.

7 Q: Did you have any contact with anyone in UPS
8 management between the local level and the
9 panel? In other words, did you ever call up
10 Brad Hanser or any on-car supervisors at UPS
11 about -- between the local level and the panel?

12 A: Brad or -- you're saying anybody in management?

13 Q: Anybody in management.

14 A: Did I call them about this?

15 Q: I'm asking if you spoke with anyone in UPS
16 management in the Florence center between the
17 local level -- after the local level meeting
18 ended and before the panel, at any point in
19 time in there, did you talk with anyone at UPS
20 management in the Florence center?

21 A: I remember talking to my -- she's a part-time
22 supervisor.

23 Q: And who was that?

24 A: That would be -- I can't remember her last
25 name. Tonya.

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1 Q: And why did you talk to her?

2 A: Just general conversation.

3 Q: And was this at the center or somewhere else?

4 A: This was somewhere else.

5 Q: By telephone?

6 A: Right.

7 Q: By cell phone?

8 A: That's correct.

9 Q: You had replaced your cell phone by this time?

10 A: Right.

11 Q: Or was it working --

12 A: Well, I don't know whether I replaced it or
13 whether I had it fixed, but I -- this is the
14 third cell phone that I had.

15 Q: And did you talk with Tonya about your
16 discharge at all?

17 A: I did.

18 Q: And tell me about that discussion.

19 A: You know, I can't remember. I haven't talked
20 to her in awhile. It's been a long time.

21 Q: And you don't recall what it is you talked
22 about with her?

23 A: I mean, we talked about, you know, me being
24 terminated. But so far as remembering exactly
25 what I said, I don't. I don't remember that.

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1 Q: Do you remember what she said?

2 A: No, I don't.

3 Q: Did she express an opinion as to your
4 discharge?

5 A: I know she one time mentioned that she felt
6 like Brad was -- what's the word I'm looking
7 for -- was being discriminatory against her.

8 Q: Discriminatory on what basis?

9 A: You know, the way he was treating her.

10 Q: Yeah. I'm sorry, I meant discriminating
11 against her based on her race, based on gender,
12 based on some other factor? Did she say?

13 A: Right. Well, that's what I gather. I don't --
14 just like I said, these conversations been so
15 long, I --

16 Q: I understand. But you have very specific
17 recall about some conversations and not about
18 others, so what I'm trying to figure out is --
19 get as much detail as I can, okay? Do you
20 recall --

21 MR. BABB: Objection to statement.

22 MR. GARTLAND: Okay.

23 MR. BABB: Go ahead.

24 Q: Do you recall whether she mentioned
25 specifically that she felt the conduct was

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1 discriminatory?

2 A: You know, just his behavior towards her.

3 Q: Was that her word or is that your word?

4 A: Those was her words.

5 Q: Discriminatory, she used that word
6 specifically?

7 A: Right, I remember those -- I can -- can
8 remember that, that --

9 Q: Okay.

10 A: -- she felt that way.

11 Q: And about what specific -- did she give
12 examples, were there specific employment
13 decisions?

14 A: No. I mean, just -- just like I said. I think
15 she said the way he acted towards her.

16 Q: For the record, what is Tonya's race?

17 A: Black.

18 Q: Did you speak with anyone else at the Florence
19 center in management between the local level
20 hearing and the panel?

21 A: In management, no, I don't -- I don't recall
22 speaking to anybody else.

23 Q: Okay.

24 (Defendant's Exhibit Number Twelve was marked for
25 identification purposes.)

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1 (Defendant's Exhibit Number Thirteen was marked for
2 identification purposes.)

3 Q: All right, Mr. Kelley. Have you had an
4 opportunity to review Exhibit Thirteen?

5 A: Yes, I have.

6 Q: Okay. Have you seen this document before?

7 A: Yes.

8 Q: Does it appear to be a correct copy of the
9 complaint filed against UPS on your behalf in
10 this case?

11 A: Yes.

12 Q: And you understand that you are asserting a
13 claim for race discrimination against UPS,
14 correct?

15 A: That's correct.

16 Q: If you could, tell me each action that you
17 believe UPS took against you because of your
18 race.

19 A: There was one incident where I had to -- with
20 a road test and I had to do some backing and --

21 Q: Okay. Why don't we do this, and I'm sorry to
22 interrupt you, but I just want to figure out
23 the best way to do this because you'll probably
24 have more than one, right, that you're going to
25 list?

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- 1 A: Exactly.
- 2 Q: Let's list them first and then we can talk
3 about them individually, okay? So we're just
4 going to list them right now and then we can
5 get into the detail of each of them once you
6 finish the list, okay?
- 7 A: Okay.
- 8 Q: So for right now I just want you to list it.
9 You said the road test where there was some
10 backing involved?
- 11 A: Exactly.
- 12 Q: Okay. Was that in 2005?
- 13 A: That's correct.
- 14 Q: Okay. And the next action that you believe was
15 taken against you because of your race?
- 16 A: Where they said that I sheeted packages wrong
17 and then -- well, you said we'll get into them
18 later.
- 19 Q: Yeah. That was a disqualification at a time
20 that you were trying to become a full-time
21 package car driver?
- 22 A: That's correct.
- 23 Q: Do you recall what year that took place?
- 24 A: I want to say that was -- that was in -- that
25 one was in '08.

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1 Q: All right. And the next one?

2 A: The next one were in January the --

3 Q: The discharge.

4 A: The discharge, yes.

5 Q: Okay. Any others?

6 A: There again, this was -- this was one where --
7 where they asked me -- where they disqualified
8 me for sheeting up a package incorrect, but
9 they sent a message to a white guy to sheet it
10 up on the same -- the same way that I got
11 disqualified.

12 Q: Okay. But that's still the same
13 disqualification and you think it was 2008,
14 correct?

15 A: This was a different incident.

16 Q: Right, involving another driver, a white
17 driver. Sorry, I may be confused. You've
18 listed three incidents that you think were
19 motivated by race discrimination.

20 A: Right.

21 Q: And then you just mentioned a white driver
22 being given instruction to sheet up a package
23 in a similar way.

24 A: Exactly.

25 Q: Is that a separate incident that you think was

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1 taken against you or does that relate to your
2 disqualification in 2008?

3 A: I was disqualified three times.

4 Q: Okay.

5 A: The first time was the backing.

6 Q: In 2005.

7 A: Right. The second time was about the scanning
8 of packages being left on the truck.

9 Q: And when was that?

10 A: It was in '07 or '06.

11 Q: And you said you were disqualified at that time
12 because of packages left on the truck?

13 A: Yeah, they say I left some un-scanned packages
14 on the --

15 Q: Un-scanned and undelivered?

16 A: Well, what's the right terminology for it?

17 Q: Service failure? Missed packages?

18 A: Missed packages, right.

19 Q: Sorry, I was just -- I didn't mean to put words
20 in your mouth, I just -- I know these terms, so
21 I'm trying to --

22 A: Okay.

23 Q: -- fill in the blanks where I can. Okay, so
24 those four events. Any others?

25 A: As of right now, I can't -- I can't remember

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1 any of them, but as we get into them, I mean,
2 they may come to me.

3 Q: Okay. And if they come to you and you want to
4 add to the list, just let me know.

5 A: Okay.

6 Q: You mentioned first the road test in 2005.

7 A: Exactly.

8 Q: What is it about that disqualification that you
9 believe was discriminatory?

10 A: Okay. Well, at first I wasn't -- I wasn't
11 supposed to do a road test. I was told by
12 human resources that there was one on file
13 where I had passed.

14 Q: And what year was that from?

15 A: That was '05 also.

16 Q: So you had previously done a road test in '05?

17 A: Way before '05. Before '05 I may have taken at
18 least two or three of them trying to become an
19 air driver, but every time I got ready to go to
20 school they would always tell me that there was
21 something that I didn't complete.

22 Q: Okay. Isn't a driver required to complete a
23 road test every time he or she tries to
24 qualify?

25 A: No.

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1 Q: That's not the rule?

2 A: No, not according to human resources.

3 Q: Okay. Have you ever had any responsibility for
4 administering road tests?

5 A: Meaning?

6 Q: Have you ever been responsible for
7 administering a road test to someone who is
8 trying to qualify to go drive?

9 A: I don't get what you're --

10 Q: I'm trying to -- who administers road tests in
11 the Florence facility?

12 A: You mean the instructor?

13 Q: Correct.

14 A: For me, that was Brad.

15 Q: But what position was Brad at the time?

16 A: He was an on car sup.

17 Q: Okay. So is it fair to say --

18 A: But that was in -- excuse me.

19 Q: Go ahead.

20 A: That was in two -- that was when I was trying
21 to go to full-time. But before then, the other
22 road tests that I've taken in the past, it
23 wasn't him.

24 Q: Was it an on-car supervisor?

25 A: Right, I remember one guy name and it was Ron

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1 Watson.

2 Q: Okay. But you've never been the person giving
3 the road test --

4 A: Oh, no.

5 Q: -- to someone else?

6 A: No.

7 Q: That's never been part of your job
8 responsibilities.

9 A: Right.

10 Q: So your understanding of the policy is based on
11 the alleged comment from someone in HR?

12 A: Right.

13 Q: Okay. And who is that person again?

14 A: That was Mike Bookman.

15 Q: Okay. And did you speak with Mr. Bookman
16 before or after the road test in 2005?

17 A: Before. And he stated that I did not need to
18 take a road test.

19 Q: And then you received a road test.

20 A: Right, David forced me to take it.

21 Q: How do you know it was David?

22 A: Because he actually -- he actually told me
23 himself. Told me that after I talked with him
24 and told him what Mike Bookman said and also
25 Mike talked to him, but he told me that I was

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1 going to take a road test. If I wanted to go
2 to school, I was going to take a road test,
3 another road test.

4 Q: So you believe it was his decision for you to
5 take another road test before you qualify?

6 A: David, yes.

7 Q: Okay. And why is it that you believe that
8 decision was discriminatory?

9 A: Because later on there was a white driver that
10 didn't have to do any backing at all.

11 Q: As part of his road test?

12 A: Right.

13 Q: Who was that white driver?

14 A: That was Jason Johnson.

15 Q: And do you know who Mr. Johnson's instructor
16 was for that road test?

17 A: I believe it was Molly.

18 Q: A different instructor than your road test,
19 correct?

20 A: Right, and there was also Ms. Mary.

21 Q: Ms. Mary was also administering road tests?
22 I'm sorry, what is it about Ms. Mary that you
23 think is relevant?

24 A: I mean, she -- during that time she was just
25 along with Jason.

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1 A: And neither one of them had to back.

2 Q: Right. But if it's your contention that you
3 were singled out because you're black --

4 A: Black male.

5 Q: Black male.

6 A: At the time.

7 Q: But they also -- it's your testimony that both
8 a male and a black employee were not required
9 to do backing or received more favorable
10 treatment, is that correct?

11 A: A white male and a black female, right.

12 Q: Okay, all right. What about the incident in
13 which you were disqualified, I think you
14 testified you think it was in 2008, for
15 sheeting up packages incorrectly? Tell me what
16 you leads you to believe that that was
17 discriminatory on the basis of your race.

18 A: That's in 2008?

19 Q: I think you testified that you believed it was
20 in 2008.

21 A: Okay. Where I was disqualified for sheeting up
22 a package wrong and Phil Santos, which is a
23 white driver, sheeted up a package incorrect
24 and he was just put on a conference call and
25 went on to become a full-time driver.

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1 Q: So you're alleging that this incident with Mr.
2 Santos took place during his qualification
3 period?

4 A: Yes.

5 Q: His first 30 days?

6 A: Right.

7 Q: And did it take place -- the time in which you
8 were disqualified for sheeting up packages
9 incorrectly, was that during the 30 day period?

10 A: That's correct.

11 Q: Okay. And do you recall what it is
12 specifically the company said you did wrong
13 with respect to those packages? In other
14 words, what I'm trying to figure out is were
15 they missed packages or were they packages that
16 you scanned with the incorrect code? What
17 exactly was the problem, according to them?

18 A: In 2008 -- okay, yes, they said that I sheeted
19 up the packages wrong as they were supposed to
20 be sheeted up as missed, but they were sheeted
21 up as not ready, which I was instructed to
22 sheet them up that way.

23 Q: By who?

24 A: By -- by a guy named Blake.

25 Q: I'm sorry, Blake?

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1 A: Blake.

2 Q: Do you recall Blake's last name?

3 A: I don't remember his last name. I know he no
4 longer works with the company.

5 Q: Okay. What was Blake's position at the time?

6 A: At that time he was an on-car supervisor and --

7 Q: And this instruction, the alleged conversation
8 with Blake took place during?

9 A: PTM meeting.

10 Q: And as best you can recall, what was the
11 instruction from Blake?

12 A: You know, if you find a missed package on your
13 truck, you know, don't sheet it up as missed,
14 sheet it up as not ready.

15 Q: Do you have any understanding as to whether
16 that's a correct statement of UPS policy?

17 **MR. BABB:** Object to the form of the question.

18 A: I wouldn't know.

19 Q: In other words, is that the proper procedure or
20 do you think Blake was wrong?

21 A: You know, I was doing what I was -- I didn't --
22 I don't think that that's the proper procedure,
23 but I was doing as I was instructed, you know,
24 to sheet them up the way he wanted them sheeted
25 up. I mean, I didn't know.

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1 Q: But Blake isn't the only person whoever
2 provided you instruction on sheeting up
3 packages, correct?

4 A: To sheet them up that way, he was -- that's the
5 first time I heard of not ready.

6 Q: But you received training or instruction from
7 other on-car supervisors about the process of
8 sheeting up packages correctly.

9 A: Right.

10 Q: Okay. And do you recall any instruction from
11 other supervisors that was different from the
12 instruction that Blake gave you? Do you recall
13 -- let me ask it this way. Do you recall any
14 other supervisors ever providing you
15 instructions on how to code a missed package?

16 A: I mean, you know, during your training, you
17 know, you're just scanning and if you -- if you
18 -- whatever you're doing or whoever you're
19 giving the package to, you put it in the board
20 as that. But just that day, if -- all I know
21 is the missed package, he instructed us not to
22 sheet them up as missed; as to sheet them up as
23 not ready.

24 Q: And then --

25 A: And, you know, I didn't know whether that was,

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1 you know, incorrect or bad. You know, I just
2 went along with it because that's --

3 Q: But you were later told that that is incorrect,
4 right?

5 A: Right, because I was disqualified.

6 Q: Right. And how did they say those packages
7 should have been coded?

8 A: As a miss.

9 Q: Okay. And so you testified that you believe
10 Phil Santos also sheeted up packages
11 incorrectly?

12 A: Right, he sheeted up --

13 Q: During his -- during -- I'm sorry. During his
14 qualification period?

15 A: Right, he sheeted up a package incorrectly and
16 they put him on a conference call.

17 Q: And how are you aware of Mr. Santos' work
18 history? How did you come to know of Mr.
19 Santos allegedly --

20 A: Did that?

21 Q: -- incorrectly scanning a package? Yes.

22 A: Because he came and told me.

23 Q: After this conference call?

24 A: Right.

25 Q: And do you know why he told you?

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1 A: I don't know why, but I mean, me and him is --
2 I guess he was concerned why they would
3 disqualify me and not disqualify him.

4 Q: Was this the same time period as you were --
5 your qualification period and Mr. Santos'
6 qualification period, we're talking about the
7 same time frame?

8 A: No, I was -- he came after I did.

9 Q: Okay.

10 A: I was disqualified and then he was -- come up
11 next to be a full-time driver.

12 Q: In the same year?

13 A: Yes, in that same year.

14 Q: Okay. And do you know what exactly Mr. Santos
15 did wrong in terms of scanning a package?

16 A: If my memory serve me correctly, he said that
17 he -- after the business was closed it was
18 something about how he scanned a package wrong.
19 I don't know -- I don't remember how he said he
20 sheeted it up, but --

21 Q: Do you know how he was supposed to sheet it up,
22 according to the company?

23 A: As a miss.

24 Q: Because the business was already closed?

25 A: Exactly.

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1 Q: Is it possible that he scanned it up as not
2 ready?

3 A: Oh, I don't know.

4 Q: Okay. Anything else you recall about that
5 conversation with Mr. Santos?

6 A: That's about it.

7 Q: And I seem to recall that you -- there was
8 evidence offered that you had prepared and
9 perhaps filed a grievance regarding the
10 incident with Mr. Santos? In other words, did
11 you ever -- do you recall ever filing a
12 grievance saying something to the effect of Mr.
13 Santos did the same thing I did and he didn't
14 get disqualified?

15 A: No, I didn't. I spoke with my business agent
16 --

17 Q: Okay.

18 A: -- about it.

19 Q: What did Mr. Eason say?

20 A: There, once again, he told me that they can
21 fire you, disqualify you for anything during
22 your 30 day grace period and there's nothing
23 that you could do.

24 Q: And you can't grieve a disqualification?

25 A: According to him, he said there was nothing I

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1 could do about it.

2 Q: Okay. So other than the incident with Mr.
3 Santos, are there any other facts that lead you
4 to believe your disqualification in 2008 was
5 based on race?

6 A: Just like I said, there was one incident that
7 where -- and this is the same thing, and I did
8 file on this. Where -- where they disqualified
9 me for sheeting up that package wrong and
10 sheeting it up as not ready, but they sent the
11 white guy, Chris Sims, a message to sheet up --
12 there was a package that was missed and they
13 sent the message to him to sheet it up as not
14 ready.

15 Q: And who is they?

16 A: Management.

17 Q: Do you know who specifically in management?

18 A: I can't remember. I don't know.

19 Q: Did you ever see a copy of the message?

20 A: Let me think here. No, I talked with Chris and
21 I don't remember seeing the message, but he,
22 you know, told me about it. And I also
23 remember him and a shop steward, which was Ed
24 Milligan, talking about it and they both knew
25 it was wrong. I don't believe Chris sheeted it

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1 up like they told him to, but Ed Milligan told
2 Chris that, you know, that was the same thing
3 that Kelley was disqualified for and I heard
4 him tell him that.

5 Q: Do you recall when it was that Mr. Sims did
6 this?

7 A: I've got it written down, but I don't have the
8 -- I don't know. I don't remember.

9 Q: Okay. But you did file a grievance on it?

10 A: Yes, I did.

11 Q: And what happened with that grievance?

12 A: There again, I tried to get it overturned and
13 it didn't happen.

14 Q: Did Mr. Sims receive any discipline based on
15 the incident?

16 A: No.

17 Q: And what exactly, the best you can recall, Mr.
18 Sims was instructed to do with respect to a
19 package?

20 A: Say that again.

21 Q: What is the instruction that Mr. Sims told you
22 he received from management regarding the
23 package?

24 A: The instruction was to sheet up a package as
25 not ready instead of missed.

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1 Q: Do you know whether any attempt was ever made
2 on that package?

3 A: I don't.

4 Q: Chris didn't say one way or another?

5 A: No.

6 Q: Do you know whether the business to which the
7 package was addressed was open at the time or
8 not?

9 A: No, I don't.

10 Q: Do you know any other circumstances about him
11 being instructed to sheet something up as not
12 ready?

13 A: No.

14 Q: And the grievance, I think you testified,
15 didn't go anywhere?

16 A: I'm trying to remember exactly what happened.
17 I know I filed it. I just can't remember what
18 happened with it.

19 Q: Okay. Other than the incident with Mr. Santos
20 and the incident with Mr. Sims, are there any
21 other facts that you believe demonstrate that
22 the disqualification in 2008 was based on race?

23 A: Yeah, it was several incidents. I mean, these
24 guys where David Simpson -- I had to go out on
25 a, it's not actually a road test, but it's --

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1 you have to do it every year as a driver for
2 safety.

3 Q: A ride-along or a safety ride?

4 A: Right, exactly. And I completed that with Tom
5 Drumm. And after I got back to the building,
6 you know, Tom told me that I did an excellent
7 job. You know, you passed, you're good to go.
8 And then when I came back in that afternoon on
9 my regular job, David Simpson -- not David,
10 excuse me. David Brandon approached me and
11 asked me did anybody tell you that you were
12 supposed to see me before you left after you
13 finished your safety test, road test, and I
14 said no and he said, well, you were supposed
15 to. So he called me in the office and asked me
16 to -- well, first he told me -- I mean, I
17 replied that, you know, Tom Drumm had gave me
18 the test and I had already passed with him and
19 he told me that wasn't good enough, you were
20 supposed to see me before you left.

21 Q: And what year? This was during that 2008
22 disqualification? During your qualification
23 period that year?

24 A: No, I was just -- I wasn't --

25 Q: Let me ask it this way. Do you recall when

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1 this conversation with Mr. Brandon took place?

2 A: Okay, this was -- gosh. And I could be wrong.
3 This conversation, it may have been -- I know
4 it was February 15th, maybe '08, '08 or '07.

5 Q: '08 or '07. During a qualification period or
6 once you were already an air driver?

7 A: Right, I was already an air driver.

8 Q: Okay.

9 A: So he told me that, you know, that wasn't good
10 enough with me passing that road test with Tom
11 Drumm.

12 Q: Well, I want to make sure we keep the
13 terminology straight. That it wasn't a road
14 test. It was a ride-along, a safety drive.

15 A: Okay, right.

16 Q: An annual requirement for all drivers, correct?

17 A: Exactly.

18 Q: Okay.

19 A: Exactly.

20 Q: Okay. Just want to make sure we're on the same
21 page. All right, so please continue with what
22 Mr. Brandon told you.

23 A: Okay. And he called me in the office and he
24 asked me to say what we call -- this is the
25 safety also. It's called a ten point

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1 commentary.

2 Q: All right.

3 A: Okay. And as I stated those -- and it was ten
4 of them and you have certain things, certain
5 words in big bold letters, and then you got the
6 fine print. Well, in the school they told us
7 that if you can recite what's in the big bold
8 letters, it will give you the general idea on
9 what you're supposed to be doing. And so when
10 he asked me to say the ten point commentary, I
11 did. I said them and then he said, no, that's
12 -- I said everything that was in the big bold
13 letters and he told me, no, that's not good
14 enough. I need to know the stuff in the fine
15 print.

16 Q: And were you able to provide him that?

17 A: No, I told him I didn't know that and that they
18 told us if we just remember the stuff in the
19 big bold letters it would give us a general
20 idea of what we're supposed to do. And then he
21 told me, said, well -- he said, well, he say,
22 see, you went and you got your little lawyer
23 and you don't even know your safety
24 commentaries and he told me, he said, you can't
25 drive for me.

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- 1 Q: When was this? I'm sorry, you said it was
2 February 15th, you think 2008?
3 A: Right, either -- I want to say 2008, but it may
4 be '07.
5 Q: Okay. Now, what did you understand Mr. Brandon
6 to be referring to when he mentioned the
7 lawyer?
8 A: Because I had -- I had consulted with a lawyer
9 to get my -- try to get my records, my file,
10 because they were refusing to give them to me.
11 Q: So that's what you understood Mr. Brandon to be
12 referring to? You had your lawyer contact UPS
13 about --
14 A: Right.
15 Q: -- requesting --
16 A: Right.
17 Q: -- your personnel file?
18 A: Exactly, yes.
19 Q: And that's what you believe Mr. Brandon was
20 referring to?
21 A: Oh, yes.
22 Q: Okay.
23 A: Because that's --
24 Q: Do you have --
25 A: That's what he said.

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1 Q: Do you have any understanding as to whether an
2 employee in South Carolina is entitled to
3 request a copy of their personnel file?

4 A: Do I have what now?

5 Q: What's your understanding of an employee in
6 South Carolina's right to obtain a copy of
7 their personnel file?

8 A: I think you have the right if you wanted to,
9 you know, look at your file. You just have a
10 right to do that.

11 Q: Okay. After this discussion with Mr. Brandon
12 were you discharged?

13 A: Yes.

14 Q: And what was the basis for your discharge,
15 according to the company?

16 A: I mean, I didn't receive any -- any paperwork
17 or anything, and he told me I couldn't drive
18 and I didn't drive that next Saturday, but what
19 I did -- at that time the center manager was
20 Kelsey. As a matter of fact, I think it was --
21 he had already left the building and Tanisha,
22 I mean she was in there when this went -- as a
23 matter of fact, Tom Drumm was in there, too,
24 and he asked Tom Drumm to say those same thing
25 and Tom Drumm couldn't do it.

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- 1 Q: Now, who is he? Mr. Brandon or Kelsey?
- 2 A: Tom?
- 3 Q: I'm sorry. Who asked Tom Drumm to recite the
- 4 ten point --
- 5 A: David.
- 6 Q: -- commentary?
- 7 A: David.
- 8 Q: David.
- 9 A: Right, and Tom Drumm ran out of the room.
- 10 Q: And Mr. Drumm was an on-car supervisor?
- 11 A: Correct.
- 12 Q: Okay.
- 13 A: He actually gave me the safety test that
- 14 morning.
- 15 Q: Okay. So I'm trying to figure out, were you
- 16 ever -- did you receive a warning letter or any
- 17 other formal disciplinary action as a result of
- 18 this conversation with Mr. Brandon?
- 19 A: No.
- 20 Q: Okay.
- 21 A: No. But they had -- but Tanisha contacted
- 22 Kelsey. He was the center manager at that
- 23 time. And he had to come back to the building
- 24 to talk with David about that.
- 25 Q: Were you present for that discussion?

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1 A: No, no, they --

2 Q: Did you ever talk to Mr. Cullum about the
3 discussion?

4 A: I did. He came back to me and said, look, I
5 tried to talk with him, he didn't change his
6 mind and that he couldn't go over his head.

7 Q: Change his mind about what?

8 A: About my being taken off the road as an air
9 driver.

10 Q: But didn't you stay on the road as an air
11 driver?

12 A: No, I didn't work that Saturday. As a matter
13 of fact, I didn't work that Saturday, but after
14 my business agent got involved and talked with
15 him -- and I don't know, didn't hear that
16 conversation either.

17 Q: Talked with David?

18 A: Right.

19 Q: After that you came back to work?

20 A: Right, he sent an email saying that it was a
21 misunderstanding.

22 Q: Okay.

23 A: But that wasn't --

24 Q: So you missed one Saturday as a result? I'm
25 sorry to cut you off. Go ahead, please

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1 continue.

2 A: Right, I was just going to say, but that wasn't
3 no misunderstanding. I mean, the center
4 manager went and talked to him about it and he
5 still said that I couldn't drive.

6 Q: So you missed one Saturday as a result, is that
7 your testimony?

8 A: Right.

9 Q: And then the next Saturday you were driving air
10 again?

11 A: Right.

12 Q: Okay. So you never filed a grievance on it?

13 A: No.

14 Q: All right. Any other incidents that you
15 believe support the claim that the
16 disqualification in 2008 was discriminatory
17 based on race?

18 A: I mean, there's a lot of things that happened
19 with 2005 back in -- which was Brad. The
20 second time that I went to advance, there
21 again, Brad.

22 Q: Was that 2006 or 2007?

23 A: I'm not really sure with the second time, what
24 year the second time was.

25 Q: One of those two years, though?

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1 A: Right.

2 Q: Okay.

3 A: And Brad was my instructor then. And in 2008
4 there was where he came, you know, he will ride
5 with you, the instructor rides with you for a
6 day, and they'll turn you loose and then they
7 kind of follow you around just to see how you
8 perform. Well, the second day he came to my
9 truck.

10 Q: He is Brad?

11 A: He is Brad.

12 Q: Okay.

13 A: And was angry. And told me, why don't you just
14 go back to the center and tell them that you
15 want your job back, your old job back.

16 Q: Because he didn't believe you were performing
17 at the level you should?

18 **MR. BABB:** Object to the form of the question. You
19 can answer.

20 A: I mean, I just --

21 Q: Well, did you --

22 A: I didn't --

23 Q: Did you understand him to be dissatisfied with
24 your performance?

25 A: I understood that he was -- they was targeting

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1 me.

2 Q: But on that specific day why do you believe it
3 was -- I mean, let me rephrase it. Did Brad or
4 did Mr. Hanser indicate why it was that he was
5 telling you you should go back to the center?

6 A: No, he didn't.

7 Q: Did you understand him to be dissatisfied with
8 your performance that day?

9 A: I didn't know why, but I told him, I said,
10 look, I can do this if you'll just give me a
11 fair chance.

12 Q: So by that comment, it seems like you did
13 understand that he wasn't satisfied with your
14 performance.

15 MR. BABB: Object to the --

16 A: Well, I --

17 MR. BABB: -- form of the question.

18 A: -- mean --

19 MR. BABB: Hold on. Object to the form of the
20 question. You may answer.

21 A: Okay. I mean, just like I said, I didn't know
22 why. I guess, I mean, I didn't really know why
23 he was -- I just -- you know, there was so much
24 going on, I just wanted him to just treat me
25 fair, leave me alone, and let me do my job.

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1 Q: But isn't his job to evaluate you and observe
2 you as you're performing these duties?

3 A: Correct.

4 Q: That's his responsibility, right?

5 A: Right.

6 Q: So if he left you alone and didn't evaluate
7 your performance, he wouldn't be doing his job,
8 right?

9 **MR. BABB:** Object to the form of the question.

10 A: Right. I mean, what I'm saying is the yelling,
11 the being angry, telling me to just go back to
12 my job, my old job. I mean, I didn't mind him
13 being my instructor, but, you know, be fair.

14 Q: All right. So what was unfair about the day in
15 2006 or 2007 when you said he told you to go
16 back to your old job?

17 A: That was it. The way he came up to my truck
18 yelling at me.

19 Q: What did you do after he made this comment to
20 you?

21 A: Well, the next day I reported it. We had a
22 meeting upstairs.

23 Q: Did Mr. Hanser discharge you that day?

24 A: No.

25 Q: Did you continue to deliver packages that day?

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1 A: Right.

2 Q: All right. So you said you had a meeting the
3 next day about it?

4 A: Right, with -- I can't remember. I know the
5 guy name is Darrell, I can't remember his last
6 name, and Ms. Roxanne. It's like our early
7 meeting in the morning and they ask us, you
8 know, if we had any concerns, to talk with them
9 about and --

10 Q: Who is Darrell?

11 A: He's a UPS driver. I can't remember his last
12 name.

13 Q: And who is Roxanne?

14 A: She also a UPS driver.

15 Q: And you brought this up with them?

16 A: Yes, I did.

17 Q: Are they union stewards?

18 A: I know they got something to do with safety.
19 I'm not sure whether they're union or not.

20 Q: Okay. And you spoke with them about it and
21 what happened next?

22 A: And then Brad -- I had no problems out of him.

23 Q: After that?

24 A: After that.

25 Q: Do you know whether Brad received any

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1 discipline in connection with this meeting?

2 A: No, I don't.

3 Q: Do you know who spoke with Brad after the
4 meeting?

5 A: No.

6 Q: What did you understand that Darrell and
7 Roxanne were going to do with this information
8 once they had it?

9 A: Maybe go and talk with management.

10 Q: Okay. But they never came back to you and
11 said, hey, we talked to so and so and --

12 A: No, no, they did not.

13 Q: Is there anything else about -- that you
14 contend supports your claim that the
15 disqualification in 2008 was discriminatory?

16 A: Okay. Here again, I don't know what year this
17 is, but since we're talking about Ms. Roxanne.
18 They was always saying I was dishonest and I
19 think they talked with me about my attendance.

20 Q: You don't remember what year this was?

21 A: No, I don't.

22 Q: Did you receive a warning letter or some other
23 disciplinary action?

24 A: No.

25 Q: Who talked with you about attendance?



124 Creekside Road
West Columbia, SC 29172
803.822.6215 Tel
803.822.6459

January 9, 2009

Eric Kelley
1618 Willis Dr.
Hartsville, SC 29550

Dear Eric:

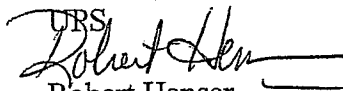
ID# 0257772

On January 3, 2009, you were grossly insubordinate and abandoned your job.

Therefore, because of your action, your employment with UPS is terminated.

This is an official termination letter as outlined in the current labor agreement between the I.B.T. Local # 71 and UPS.

Sincerely,

UPS

Robert Hanser
Business Manager

PC: Local # 71
Rich McArdle
Walt Dickson
David Brandon
File
Certified Mail # 7006 2760 0005 3955 0177
Certified Mail # 7006 2760 0005 3955 8242

